

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARSHA J BAILEY**  
Claimant

**APPEAL 21A-UI-01479-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE HOLY FAMILY CATHOLIC**  
Employer

**OC: 03/29/20**  
**Claimant: Appellant (4R)**

Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment  
Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.4(5) – Reasonable Assurance

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the December 8, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits because she was still employed at the same hours and same wages as her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on February 19, 2021. The claimant participated personally. The employer, Dubuque-Holy Family Catholic, was represented by Paul Jahnke and participated through witness Marie Miller. The parties waived due notice of the issue of reasonable assurance pursuant to Iowa Code § 96.4(5). The administrative law judge took official notice of the claimant's unemployment insurance benefits records. This hearing was consolidated with Appeal No. 21A-UI-01480-DB-T.

**ISSUES:**

Was the claimant able to work and available for work?  
Was the claimant totally, partially, or temporarily unemployed?  
Did the claimant have reasonable assurance between academic years or terms?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer as a full-time cook since November 18, 2019. This employer is an educational institution. Claimant is contracted to only work during school and does not work during regular breaks such as spring break, winter break, or summer break.

Claimant filed an original claim for unemployment insurance benefits with an effective date of March 29, 2020. The claimant's weekly benefit amount is \$351.00. Her base period consists of wages earned with Scenic Acres in the following amounts:

	2018/4	2019/1	2019/2	2019/3
Scenic Acres	\$8,076.00	\$6,447.00	\$6,747.00	\$5,950.00

She had worked full-time for Scenic Acres as a Community Service Provider. Scenic Acres is not an educational institution.

When the COVID-19 pandemic occurred, this employer was on its customary spring break from March 15, 2020 through March 21, 2020. Classes were scheduled to resume on March 23, 2020 but they did not because the school was completely closed for the remainder of the 2019/2020 school year due to the COVID-19 pandemic. The school year for the 2019/2020 session ended on June 4, 2020.

Claimant filed weekly-continued claims for benefits from March 29, 2020 through August 1, 2020. She was paid unemployment insurance benefits from March 29, 2020 through August 1, 2020. She only reported gross wages earned during the week-ending August 1, 2020 and she reported \$62.00. Claimant earned gross wages of \$420.00 for the week-ending April 4, 2020 but failed to report those earnings when filing her weekly-continued claim for benefits. Claimant did not earn any further wages from this employer after April 4, 2020. Claimant's administrative records establish that she also was paid Federal Pandemic Unemployment Compensation (FPUC) benefits.

On May 12, 2020, Ms. Miller spoke with the claimant over the telephone and she offered for the claimant to return the next 2020/2021 school year in her same position, which she accepted. On May 29, 2020, the claimant tendered a written resignation by email stating that she would be available for an additional two-week period until June 12, 2020. Claimant voluntarily quit her position in order to move to a new city. Claimant began employment with another full-time employer on July 1, 2020. Claimant had been able to and available for work through June 12, 2020.

The issue of whether the claimant was overpaid regular unemployment insurance benefits for the week-ending April 4, 2020 and from June 14, 2020 through August 1, 2020 will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination. The issue of whether the claimant was overpaid FPUC benefits for the week-ending April 4, 2020 and from June 14, 2020 through August 1, 2020 will be remanded to the Benefits Bureau of Iowa Workforce Development for an investigation and determination.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

**(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.**

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

(emphasis added).

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code § 96.3, 96.4 and 96.19(38).

From March 29, 2020 through April 4, 2020, the claimant earned gross wages above her weekly-benefit amount, plus \$15.00. As such, benefits are denied from March 29, 2020 through April 4, 2020 pursuant to Iowa Code § 96.19(38) and Iowa Admin. Code r. 871-24.18.

From April 5, 2020 through June 4, 2020, the claimant was totally unemployed as she performed no services and earned no wages while the employer was closed due to the COVID-19 pandemic. Unemployment insurance benefits funded by the State of Iowa are allowed from April 5, 2020 through June 6, 2020, provided the claimant remained otherwise eligible.

As of the week-beginning June 7, 2020, this was the customary summer break period and the claimant would not have been working anyway as she only worked during the time the school was in session.

Iowa Code section 96.4(5) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

a. Benefits based on service in an instructional, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "educational service agency" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will

perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

Iowa Admin. Code r. 871-24.52(9) provides in part:

(9) Vacation period and holiday recess. With respect to any services performed in any capacity while employed by an educational institution, unemployment insurance payments shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform service in the period immediately following such vacation period or holiday recess. However, the provision of subrule 24.52(6) could also apply in this situation.

Iowa Admin. Code r. 871-24.52(6) provides:

(6) Benefits which are denied to an individual that are based on services performed in an educational institution for periods between academic years or terms shall cause the denial of the use of such wage credits. **However, if sufficient non-school wage credits remain on the claim to qualify under Iowa Code § 96.4(4), the remaining wage credits may be used for benefit payments, if the individual is otherwise eligible.**

(emphasis added).

In this case, the claimant's sole wages listed in her base period are wages based upon employment with Scenic Acres, a non-educational employer. As such, the claimant has sufficient non-school wage credits on her claim to qualify under Iowa Code § 96.4(4), up until the date the claimant was not otherwise eligible. Therefore, unemployment insurance benefits are allowed effective June 7, 2020 through June 13, 2020 and this employer's account is not subject to charges for benefits paid during that one-week period.

Effective June 14, 2020, the claimant voluntarily quit her employment with this employer without good cause attributable to the employer and would not remain otherwise eligible for benefits pursuant to Iowa Admin. Code r. 871-24.52(6). See Appeal No. 21A-UI-01480-DB-T. Benefits are denied effective June 14, 2020.

#### **DECISION:**

The December 8, 2020 (reference 01) unemployment insurance decision is modified in favor of the appellant. Unemployment insurance benefits funded by the State of Iowa are denied from March 29, 2020 through April 4, 2020 as the claimant was not unemployed and earned excessive wages above her weekly-benefit amount, plus \$15.00.

Unemployment insurance benefits funded by the State of Iowa are allowed from April 5, 2020 through June 6, 2020 as the claimant was totally unemployed, provided she remained otherwise eligible.

Unemployment insurance benefits funded by the State of Iowa are allowed from June 7, 2020 through June 13, 2020 based on the claimant's other non-educational wages credits while she

had reasonable assurance from this employer. The employer shall not be charged for benefits paid during this one-week period.

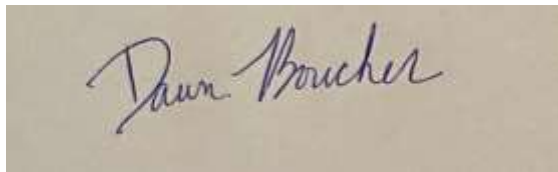
Unemployment insurance benefits are denied effective the benefit week beginning June 14, 2020 as the claimant voluntarily quit her employment without good cause attributable to the employer. See Appeal No. 21A-UI-01480-DB-T.

**REMAND:**

The issue of whether the claimant was overpaid regular unemployment insurance benefits for the one-week period ending April 4, 2020 and from June 14, 2020 through August 1, 2020 will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

The issue of whether the claimant was overpaid FPUC benefits for the week-ending April 4, 2020 and from June 14, 2020 through August 1, 2020 will be remanded to the Benefits Bureau of Iowa Workforce Development for an investigation and determination.

*This decision denies unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.*

A rectangular box containing a handwritten signature in blue ink that reads "Dawn Boucher".

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Dawn Boucher  
Administrative Law Judge

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March 01, 2021  
Decision Dated and Mailed

db/ol

**Note to Claimant**

- This decision may determine you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law and if you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.

- **You will need to apply for PUA to determine your eligibility under the program.**

For additional information on how to apply for PUA go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>.

- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit: <https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.